

AMENDED IN ASSEMBLY APRIL 13, 2010

AMENDED IN ASSEMBLY APRIL 12, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2633

Introduced by Assembly Member Davis

February 19, 2010

~~An act to amend Section 17602 of the Business and Professions Code, relating to business. An act to amend Section 8880.56 of the Government Code, relating to the California State Lottery Commission.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2633, as amended, Davis. ~~Business: automatic renewals or continuous service offers. California State Lottery Commission: report.~~

Existing law requires the California State Lottery Commission to prepare and submit to the Legislature by October 1 of each year a report detailing the lottery's purchase of goods and services through the Department of General Services. Existing law requires also requires this report to include a listing of contracts awarded for more than \$100,000, and to provide specified information in this regard.

This bill would require that the report described above include a list of each advertizing agency from which the commission has purchased services, how much the agency was paid, and what specific services the agency provided. The bill would also reduce the threshold amount of a contract that is required to be listed in the report from \$100,000 to \$10,000.

~~Existing law, on and after December 1, 2010, makes it unlawful for any business making an automatic renewal or continuous service offer to a consumer in this state to, among other things, fail to present the~~

~~automatic renewal or continuous service offer terms in a clear and conspicuous manner.~~

~~Existing law imposes specified duties on the Director of Consumer Affairs with regard to consumer interests.~~

~~This bill, on and after December 1, 2011, and until December 1, 2015, would require the Department of Consumer Affairs to annually report to the Legislature any consumer complaints made to the department related to automatic renewal or continuous service offer terms and any recommendations for corrective legislation.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8880.56 of the Government Code is
2 amended to read:

3 8880.56. (a) Notwithstanding other provisions of law, the
4 director may purchase or lease goods and services as are necessary
5 for effectuating the purposes of this chapter. The director may not
6 contract with any private party for the operation and administration
7 of the California State Lottery, created by this chapter. However,
8 this section does not preclude procurements which integrate
9 functions such as game design, supply, advertising, and public
10 relations. In all procurement decisions, the director shall, subject
11 to the approval of the commission, award contracts to the
12 responsible supplier submitting the lowest and best proposal that
13 maximizes the benefits to the state in relation to the areas of
14 security, competence, experience, and timely performance, shall
15 take into account the particularly sensitive nature of the California
16 State Lottery and shall act to promote and ensure integrity, security,
17 honesty, and fairness in the operation and administration of the
18 lottery and the objective of raising net revenues for the benefit of
19 the public purpose described in this chapter.

20 (b) Notwithstanding any other provision of this chapter, the
21 following shall apply to contracts or procurement by the lottery:

22 (1) To ensure the fullest competition, the commission shall
23 adopt and publish competitive bidding procedures for the award
24 of any procurement or contract involving an expenditure of more
25 than one hundred thousand dollars (\$100,000). The competitive
26 bidding procedures shall include, but not be limited to,

1 requirements for submission of bids and accompanying
2 documentation, guidelines for the use of requests for proposals,
3 invitations to bid, or other methods of bidding, and a bid protest
4 procedure. The director shall determine whether the goods or
5 services subject to this paragraph are available through existing
6 contracts or price schedules of the Department of General Services.

7 (2) The contracting standards, procedures, and rules contained
8 in this subdivision shall also apply with respect to any subcontract
9 involving an expenditure of more than one hundred thousand
10 dollars (\$100,000). The commission shall establish, as part of its
11 bidding procedures for general contracts, subcontracting guidelines
12 that implement this requirement.

13 (3) The provisions of Article 1 (commencing with Section
14 11250) of Chapter 3 of Part 1 of Division 3 apply to the
15 commission.

16 (4) The commission is subject to the Small Business
17 Procurement and Contract Act, as provided in Chapter 6.5
18 (commencing with Section 14835) of Part 5.5 of Division 3.

19 (5) In advertising or awarding any general contract for the
20 procurement of goods and services exceeding five hundred
21 thousand dollars (\$500,000), the commission and the director shall
22 require all bidders or contractors, or both, to include specific plans
23 or arrangements to utilize subcontracts with socially and
24 economically disadvantaged small business concerns. The
25 subcontracting plans shall delineate the nature and extent of the
26 services to be utilized, and those concerns or individuals identified
27 for subcontracting if known.

28 It is the intention of the Legislature in enacting this section to
29 establish as an objective of the utmost importance the advancement
30 of business opportunities for these small business concerns in the
31 private business activities created by the California State Lottery.
32 In that regard, the commission and the director shall have an
33 affirmative duty to achieve the most feasible and practicable level
34 of participation by socially and economically disadvantaged small
35 business concerns in its procurement programs.

36 By July 1, 1986, the commission shall adopt proposal evaluation
37 procedures, criteria, and contract terms which are consistent with
38 the advancement of business opportunities for small business
39 concerns in the private business activities created by the California
40 State Lottery and which will achieve the most feasible and

1 practicable level of participation by socially and economically
2 disadvantaged small business concerns in its procurement
3 programs. The proposal evaluation procedures, criteria, and
4 contract terms adopted shall be reported in writing to both houses
5 of the Legislature on or before July 1, 1986.

6 For the purposes of this section, socially and economically
7 disadvantaged persons include women, Black Americans, Hispanic
8 Americans, Native Americans (including American Indians,
9 Eskimos, Aleuts, and Native Hawaiians), Asian-Pacific Americans
10 (including persons whose origins are from Japan, China, the
11 Philippines, Vietnam, Korea, Samoa, Guam, the United States
12 Trust Territories of the Pacific, Northern Marianas, Laos,
13 Cambodia, and Taiwan), and other minorities or any other natural
14 persons found by the commission to be disadvantaged.

15 The commission shall report to the Legislature by July 1, 1987,
16 and by each July 1 thereafter, on the level of participation of small
17 businesses, socially and economically disadvantaged businesses,
18 and California businesses in all contracts awarded by the
19 commission.

20 (6) The commission shall prepare and submit to the Legislature
21 by October 1 of each year a report detailing the lottery's purchase
22 of goods and services through the Department of General Services.
23 The report shall also include, *but not be limited to*, a listing of
24 contracts awarded for more than ~~one hundred~~ *ten* thousand dollars
25 ~~(\$100,000)~~ *(\$10,000)*, the name of the contractor, amount and term
26 of the contract, and the basis upon which the contract was awarded.
27 *The report shall further include a list of each advertizing agency*
28 *from which the commission has purchased services, how much the*
29 *agency was paid, and what specific services the agency provided.*
30 *If the advertizing agency subcontracted to another agency, that*
31 *agency shall be listed and the specific services that the agency*
32 *provided shall be enumerated. The report submitted pursuant to*
33 *this subdivision shall be submitted in compliance with Section*
34 *9795.*

35 The lottery shall fully comply with the requirements of
36 paragraphs (2) to (5), inclusive, except that any function or role
37 which is otherwise the responsibility of the Department of Finance
38 or the Department of General Services shall instead, for purposes
39 of this subdivision, be the sole responsibility of the lottery, which
40 shall have the sole authority to perform that function or role.

1 ~~SECTION 1. Section 17602 of the Business and Professions~~
2 ~~Code is amended to read:~~

3 ~~17602. (a) It shall be unlawful for any business making an~~
4 ~~automatic renewal or continuous service offer to a consumer in~~
5 ~~this state to do any of the following:~~

6 ~~(1) Fail to present the automatic renewal offer terms or~~
7 ~~continuous service offer terms in a clear and conspicuous manner~~
8 ~~before the subscription or purchasing agreement is fulfilled and~~
9 ~~in visual proximity, or in the case of an offer conveyed by voice,~~
10 ~~in temporal proximity, to the request for consent to the offer.~~

11 ~~(2) Charge the consumer's credit or debit card or the consumer's~~
12 ~~account with a third party for an automatic renewal or continuous~~
13 ~~service without first obtaining the consumer's affirmative consent~~
14 ~~to the agreement containing the automatic renewal offer terms or~~
15 ~~continuous service offer terms.~~

16 ~~(3) Fail to provide an acknowledgment that includes the~~
17 ~~automatic renewal or continuous service offer terms, cancellation~~
18 ~~policy, and information regarding how to cancel in a manner that~~
19 ~~is capable of being retained by the consumer. If the offer includes~~
20 ~~a free trial, the business shall also disclose in the acknowledgment~~
21 ~~how to cancel and allow the consumer to cancel before the~~
22 ~~consumer pays for the goods or services.~~

23 ~~(b) A business making automatic renewal or continuous service~~
24 ~~offers shall provide a toll-free telephone number, electronic mail~~
25 ~~address, a postal address only when the seller directly bills the~~
26 ~~consumer, or another cost-effective, timely, and easy-to-use~~
27 ~~mechanism for cancellation that shall be described in the~~
28 ~~acknowledgment specified in paragraph (3) of subdivision (a).~~

29 ~~(c) In the case of a material change in the terms of the automatic~~
30 ~~renewal or continuous service offer that has been accepted by a~~
31 ~~consumer in this state, the business shall provide the consumer~~
32 ~~with a clear and conspicuous notice of the material change and~~
33 ~~provide information regarding how to cancel in a manner that is~~
34 ~~capable of being retained by the consumer.~~

35 ~~(d) The requirements of this article shall apply only prior to the~~
36 ~~completion of the initial order for the automatic renewal or~~
37 ~~continuous service, except as follows:~~

38 ~~(1) The requirement in paragraph (3) of subdivision (a) may be~~
39 ~~fulfilled after completion of the initial order.~~

1 ~~(2) The requirement in subdivision (e) shall be fulfilled prior~~
2 ~~to implementation of the material change.~~
3 ~~(e) Commencing December 1, 2011, and annually thereafter on~~
4 ~~December 1, the Department of Consumer Affairs shall report to~~
5 ~~the Legislature the number of consumer complaints received by~~
6 ~~the department related to automatic renewal or continuous service~~
7 ~~offer terms, the nature of those complaints, and any~~
8 ~~recommendations for corrective legislation if the department~~
9 ~~considers legislation to be necessary.~~
10 ~~(f) (1) The requirements for submitting a report imposed under~~
11 ~~subdivision (e) shall become inoperative on December 1, 2015,~~
12 ~~pursuant to Section 10231.5 of the Government Code.~~
13 ~~(2) A report to be submitted pursuant to subdivision (e) shall~~
14 ~~be submitted in compliance with Section 9795 of the Government~~
15 ~~Code.~~